TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 621

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WILLIAM RANDOLPH SCHARTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

FILED JANUARY 5, 1932

(36,435)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 621

THE UNITED STATES OF AMERICA, APPELLANT

vs.

WILLIAM RANDOLPH SCHARTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

INDEX

	Original	Print
Record from D. C. U. S., District of Massachusetts	1	1
Indictment	1	1
Plea in bar	8	6
Order sustaining plea in bar and quashing indictment	9	7
Petition for appeal and order allowing same	10	7
Assignments of error	10	8
Citation and service [omitted in printing]	12	8
Clerk's certificate [omitted in printing]	13	8
Statement of points to be relied upon and designation to print entire record	14	9

1 In United States District Court, District of Massachusetts

No. 10588, Criminal Docket

THE UNITED STATES OF AMERICA, BY INDICTMENT

v.

WILLIAM RANDOLPH SCHARTON

Indictment

Returned into court by grand jury and filed August 18, 1931

In the District Court of the United States of America in and for the District of Massachusetts, June term thereof, A. D. 1931. Held at Boston, Massachusetts.

The grand jurors of the United States of America, duly impaneled and sworn in the District Court of the United States for the District of Massachusetts at the June term of said court in the year 1931, and inquiring in and for said district, upon their oath do present and charge:

That William Randolph Scharton, now or late of the town of Reading, State of Massachusetts, hereinafter sometimes called the defendant, on, to wit, March 11, 1927, at the city of Boston, in the State of Massachusetts, in the district of Massachusetts, and within the jurisdiction of this court, unlawfully did willfully and
2 knowingly attempt to defeat and evade a large part, to wit, $10,708.03, of a tax upon his net income for the calendar year 1926, which tax was imposed by an act of Congress approved February 26, 1926, entitled "An act to reduce and equalize taxation, to provide revenue, and for other purposes," which said unlawful and willful attempt to defeat and evade said tax was an offense involving the attempting to defraud the United States of America and was by the means and in the manner following, that is to say:

That the said William Randolph Scharton, during the calendar year 1926, was an individual, a citizen of the United States, who was married and living with his wife, and who had two dependents, and whose legal residence was at the town of Reading aforesaid and principal place of business was at Boston, both being within the State and district aforesaid, and within the internal revenue collection district of Massachusetts, and who was then and there a person required by law, after the close of the calendar year 1926 and on or before March 15, 1927, to make to the collector of internal revenue for said collection district, under oath, a return for the calendar year 1926, stating specifically the items of his gross income and the deductions

and credits allowed by Title II (income tax) of the said act of Congress, by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that the regular annual accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that during the calendar year 1926, he, the said defendant, derived and had a gross income amounting to more than $5,000.00, to wit, $79,215.00, derived as follows, that is to say:

Receipts from profession		$89,000.00
Less:		
Salaries	$6,240.00	
Rents, repairs and other expenses	5,720.00	
		11,960.00
Profit from profession		77,040.00
Dividends received		2,175.00
Total income		79,215.00

and that during the said calendar year 1926 the said defend-
3 ant was entitled to and allowed by the provisions of said Title II of said Act of Congress, deductions (other than those allowed, as above set forth, in computing gross income) in the sum of, to wit, $435.00, and no more, on account of the following:

Contributions	$435.00

and that he, the said defendant, had and derived and received a net income, to wit, the gross income, less the deductions allowed by law, of, to wit, $78,780.00, upon which said net income of said defendant for said calendar year 1926 an income tax of, to wit, $10,839.40, under the act of Congress aforesaid, became and was due by him on, to wit, March 15, 1927, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said collector of internal revenue for the said internal revenue collection district of Massachusetts; and that the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid by reason of the said tax imposed by the aforesaid act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year 1926 were as aforesaid, on, to wit, March 11, 1927, at Boston aforesaid, in the State and district aforesaid, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $10,708.03, of said tax upon his net income for the calendar year 1926, and as overt acts in so unlawfully and wilfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 10, 1927, at the town of Reading, in the State and district aforesaid, make under oath an income tax return for said calendar year 1926 and thereafter and on, to wit, March 11, 1927, at the city of Boston, in the State and district aforesaid, did file and cause to be filed with said collector of internal revenue for the said internal revenue col-

lection district of Massachusetts, said income tax return for the calendar year 1926, prepared and sworn to as aforesaid, stating
4 specifically therein the items of his gross income for said calendar year 1926 to have been the sum of $14,040.00, and no more, derived as follows:

Receipts from profession		$23,000.00
Less:		
Salaries	$6,240.00	
Rent, repairs and other expenses	5,720.00	
		11,960.00
Profit from profession		11,040.00
Dividends received		3,000.00
Total income		14,040.00

and stating specifically the items of deductions (other than those taken, as above set forth, in computing gross income) allowed by the act of Congress aforesaid for said calendar year 1926 to have been the sum of $435.00 on account of the following:

Contributions	$435.00

and stating therein no other items of deductions, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1926 to have been the sum of $13,605.00, and no more, and showing the total tax due and payable by him thereon to have been the sum of $131.37, and no more.

And the said defendant then and there, to wit, March 14, 1927, paid to the collector of internal revenue for the said internal revenue collection district of Massachusetts the sum of, to wit, $32.85 (and thereafter the sum of $98.82), and no more, and furthermore, the said defendant has never made and filed with the said collector of internal revenue any other income tax return for said calendar year 1926, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year 1926 except said sum of, to wit, $131.37; against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

5 Second count

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge:

That William Randolph Scharton, now or late of the town of Reading, State of Massachusetts, hereinafter sometimes called the defendant, on, to wit, April 16, 1928, at the city of Boston, in the State of Massachusetts, in the district of Massachusetts, and within the jurisdiction of this court, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $13,972.58,

of a tax upon his net income for the calendar year 1927, which tax was imposed by an act of Congress approved February 26, 1926, entitled "An act to reduce and equalize taxation, to provide revenue, and for other purposes," which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

That the said William Randolph Scharton, during the calendar year 1927, was an individual, a citizen of the United States, who was married and living with his wife, and who had two dependents, and whose legal residence was at the town of Reading aforesaid and whose principal place of business was at Boston both being within the State and district aforesaid, and within the internal revenue collection district of Massachusetts, and who was then and there a person required by law, after the close of the calendar year 1927 and on or before March 15, 1928, to make to the collector of internal revenue for said collection district, under oath, a return for the calendar year 1927, stating specifically the items of his gross income and the deductions and credits allowed by Title II (income tax) of the said act of Congress, by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that the regular annual accounting period of the defendant was on the basis of the calendar year, and not on the basis of a fiscal year, and by reason of the fact, which the said grand jurors upon their oath charge to be a fact, that during the calendar year 1927, he, the said defendant, derived and had a gross income amounting to more than $5,000.00, to wit, $112,895.80, derived as follows, that is to say:

Receipts from profession		$143,400.00
Less:		
Salaries	$17,240.00	
Rent	2,220.00	
Other expenses	13,069.20	
		32,529.20
Profit from profession		110,870.80
Dividends received		2,025.00
Total income		112,895.80

and that during the said calendar year 1927 the said defendant was entitled to and allowed by the provisions of said Title II of said act of Congress, deductions (other than those allowed, as above set forth, in computing gross income) in the sum of, to wit, $7,342.14, and no more, on account of the following:

Taxes paid	$942.14
Stock loss	6,400.00
Total deductions	7,342.14

and that he, the said defendant, had and derived and received a net income, to wit, the gross income, less the deductions allowed by law

of, to wit, $105,553.66, upon which said net income of said defendant for said calendar year 1927 an income tax of, to wit, $17,315.91, under the act of Congress aforesaid, became and was due by him on, to wit, March 15, 1928, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said collector of internal revenue for the said internal revenue collection district of Massachusetts; and that the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid by reason of the said tax imposed by the aforesaid act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year 1927 were as aforesaid, on, to wit, April 16, 1928, at Boston aforesaid, in the State and district aforesaid, unlawfully did willfully and knowingly attempt to defeat and evade a large part, to wit, $13,972.58, of said tax upon his said net income for the calendar year 1927, and as overt acts in so unlawfully and willfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 13, 1928, at the town of Reading, in the State and district aforesaid, make under oath an income tax return for said calendar year 1927 and thereafter and on, to wit, April 16, 1928, at the city of Boston, in the State and district aforesaid, did file and cause to be filed with said collector of internal revenue for the said internal revenue collection district of Massachusetts, said income tax return for the calendar year 1927, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year 1927 to have been the sum of $42,970.80, and no more, derived as follows:

Receipts from profession		$72,500.00
Less:		
Salaries	$17,240.00	
Rent	2,220.00	
Other expenses	13,069.20	
		32,529.20
Profit from profession		39,970.80
Dividends received		3,000.00
Total income		42,970.80

and stating specifically the items of deductions (other than those taken, as above set forth, in computing gross income) allowed by the act of Congress aforesaid for said calendar year 1927 to have been the sum of $942.14, on account of the following:

Taxes paid	$942.14

and stating therein no other items of deductions, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1927 to have been the sum of $42,028.66, and no more, and showing the total tax due

and payable by him thereon to have been the sum of $3,343.33, and no more.

And the said defendant then and there, to wit, April 16, 1928, paid to the collector of internal revenue for the said internal revenue collection district of Massachusetts the sum of, to wit, $884.24 (and thereafter the sum of $2,759.09), and no more, and furthermore, the said defendant has never made and filed with the said collector of internal revenue any other income tax return for the said calendar year 1927, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year 1927 except said sum of, to wit, $3,343.33; against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

HAVEN PARKER,
Asst. United States Attorney.

A true bill.

H. L. BURRAGE,
Foreman of the Grand Jury.

This indictment was presented by the grand jury at the June term of this court, A. D. 1931, when, to wit, August 18, 1931, the Honorable James A. Lowell, district judge, sitting, the said William Randolph Scharton was set to the bar and had this indictment read to him; whereupon he said that thereof he was not guilty.

On the fourth day of September, the following plea in bar was filed by defendant:

In United States District Court

Plea in bar

Filed September 4, 1931

Now comes William R. Scharton, defendant in the above-entitled cause and having heard the indictment herein read says that he was not guilty of the said alleged offenses therein charged against him at any time and more particularly within three years next before the finding of said indictment against him; that the first count of said indictment alleges that on March 11, 1927, he unlawfully did wilfully and knowingly attempt to defeat and evade a large part of a tax upon his net income for the calendar year 1926, and count 2 of said indictment charges that on April 16, 1928, he did likewise respecting a large part of his tax upon his net income for the calendar year 1927; that said indictment was returned into court on August 18, 1931, as appears of record herein; and that the said alleged offenses ought not now be prosecuted, tried, or punished.

And this he the said William R. Scharton is ready to verify.

Wherefore he prays judgment that by the court here he may be dismissed and discharged from the said premises and the said indictment quashed.

E. MARK SULLIVAN,
DANIEL A. SHEA,
Attorneys for the Defendant.

This cause was thence continued to the present September term, A. D. 1931, when, to wit, November 20, 1931, said cause comes on to be heard on the aforementioned plea in bar, the Honorable James A. Lowell, district judge, sitting, and it is ordered by the court that said plea in bar be sustained and the indictment quashed, and said plea in bar is sustained and the indictment quashed accordingly, and the Government's exceptions noted and rights saved, and said order is as follows:

In United States District Court

Order sustaining plea in bar and quashing indictment

November 20, 1931

LOWELL, J.: This case came on to be heard by me, upon the defendant's plea in bar to the indictment. Upon hearing arguments of counsel for the defendant and of the United States attorney, it is ordered that, as the indictment was not brought within three years of the offenses charged against the defendant, and as the offenses charged by the indictment do not involve the defrauding or attempting to defraud the United States or an agency thereof, the defendant's plea in bar is sustained and the indictment is quashed. The Government's exceptions to this order are noted and the Government's rights thereto are saved.

By the court:

FRANK H. MASON,
Deputy Clerk.

J. A. L.
D. J.
Nov. 20, 1931.

10 In United States District Court

Petition for appeal from order quashing indictment

Filed and allowed December 17, 1931

To the Judges of the United States District Court for the District of Massachusetts:

In the case herein above named, the United States of America deeming the court to be in error in the order and decree made and entered herein on the twentieth day of November in the year one thousand nine hundred and thirty-one, hereby appeals from said order and decree, and it therefore prays that this appeal may be

allowed and that a transcript of the record, proceedings, and papers on which said order and decree was made after due authentication, may be sent to the United States Supreme Court.

UNITED STATES OF AMERICA,
(By its attorney.)
FREDERICK H. TARR,
United States Attorney.

Allowed
J.A.L.
D.J.
Dec. 17, 1931.

HAVEN PARKER,
Assistant United States Attorney.

In United States District Court

Assignment of errors

Filed December 17, 1931

Now comes the United States of America and, in connection with its appeal, makes the following assignment of errors; namely:

1. The court erred in sustaining the defendant's plea in bar.
2. The court erred in quashing the indictment.
3. The court erred in ruling that the defendant should not be prosecuted, tried, or punished.
4. The court erred in ruling that as the indictment was not brought within three years of the commission of the offenses charged by the indictment, it was barred by the provisions of section 1110 (a), (Title 18 U. S. C., section 585).
5. The court erred in ruling that the offenses charged by the
11 indictment were not offenses involving the defrauding or attempting to defraud the United States or an agency thereof.
6. The court erred in ruling that to evade the greater part of the income tax is not an offense involving the defrauding or attempting to defraud the United States or an agency thereof.
7. The court erred in ruling that the offenses charged by the indictment did not come within the six-year proviso of section 1110 (a) of the revenue act of 1926 (Title 18, U. S. C., section 585), in that they were offenses involving the defrauding or attempting to defraud the United States or an agency thereof.

UNITED STATES OF AMERICA,
(By its attorneys.)
FREDERICK H. TARR,
United States Attorney.
By HAVEN PARKER,
Assistant United States Attorney.

12 (Citation in usual form showing service on William R. Scharton, omitted in printing.)

13 (Clerk's certificate to foregoing transcript omitted in printing.)

14 In Supreme Court of the United States

Statement of points relied upon, and designation of entire record for printing

Filed Jan. 8, 1932

Pursuant to rule 13 of this court, appellant specifies the following points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in sustaining appellee's plea in bar.

2. The District Court erred in holding that the offenses charged did not involve the defrauding or attempting to defraud the United States or any agency thereof within the meaning of the first proviso of section 1110 (a) of the revenue act of 1926 (c. 27, 44 Stat. 9, 114–115), and that the six-year period of limitations provided therein does not apply.

3. The District Court erred in holding that the three-year period of limitations prescribed by section 1110 (a) of the revenue act of 1926 (c. 27, 44 Stat. 9, 114–115), applies and upon that ground sustaining appellee's plea in bar.

The appellant deems the entire record, as filed, to be necessary for the consideration of the above contentions.

THOMAS D. THACHER,
Solicitor General.

Dated JANUARY 8, 1932.

(File endorsement omitted.)

[Indorsement on cover:] File No. 36,435. Massachusetts, D. C. U. S. Term No. 621. The United States of America, appellant, vs. William Randolph Scharton. Filed January 5, 1932. File No. 36,435.

U. S. GOVERNMENT PRINTING OFFICE: 1932